IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

CRP.No. 2377 of 2002(A)

OS.70/2000 of I ADDL.SUB COURT, THRISSUR

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REVN. PETITIONER/ PLAINTIFF

JANATHA KURIES & LOANS (P) LTD.,
KUNNAMKULAM, TALAPPILLY TALUK,
REPRESENTED BY THE MANAGING DIRECTOR,
VARATHAPPAN, S/O.KUTTIKKAT MATHEW,
THRISSUR.

BY ADV. SRI.N.P.SAMUEL

RESPONDENTS/ DEFENDANT

VENKITARAMAN,
S/O.KRISHNAMOORTHY, VRINDAVAN, THRITHALA
VILLAGE AND DESOM, OTTAPPALAM TALUK,
NOW RESIDING AT 3/240, YESUDAS ROAD,
KUNNAMKULAM - 680 503, THRISSUR.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.NO.23277/2002

ORDER ON CMP.NO.5943/2002 IN C.R.P.NO.2377/2002

Dismissed

20/7/2007 Sd/- P.R.RAMAN, JUDGE.

P.R.RAMAN J.

C.R.P.No.2377 OF 2002

Dated this the 20th day of July, 2007

O R D E R

This revision is directed against an order passed by the Sub Court, Thrissur in O.S.No.70/2000 holding that the document produced in the case is a bond and the required stamp duty as per the provisions of the Kerala Stamp Act is not paid and therefore a direction was given to pay an amount of Rs.1,87,550/- towards stamp duty and penalty within ten days.

2. The suit is for realisation of money. Ext.A1 was produced along with the plaint. The court below did not consider the requirement of a document as a bond; but stated that the mere reading of the recitals in Ext.A1 would show that it is a bond as defined under Section 2(a) (i). Whether the amount is obliged to be paid as per this document in question or it is agreed for the repayment of some amount received previously. The term 'bond' defined under Section 2(a) is an inclusive definition, as per which any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified Act is performed, or is not performed as the case may be. However, it has to be attested by a witness and not payable to order or bearer, whereby a person

obliges himself to pay pay money to another. The bond is defined in Halsubury's Laws of England as "an instrument under seal, usually a deed poll, whereby one person binds himself to another for a payment of a specified sum of money either immediately or at fixed future date." This Court in **Mathai Mathew v. Thampi (1989 (1) K.L.T. 138)** held that a document which evidences acknowledgement of an antecedent obligation or a pre-existing liability would not normally became a bond. It may be, that a document evidencing an antecedent liability may also become a bond, if a new obligation is created by the document despite its reference to any pre-existing obligation. The court below did not consider all these aspects of the matter before coming to the conclusion that this is a bond. In the result, the order passed by the court below without even considering the various recitals contained in Ext.A1 and whether there was any new obligation created, is not proper. Accordingly, the order impugned is set aside and the matter is remanded for fresh consideration in accordance with law by the court below.

C.R.P. is disposed of as above.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

C.R.P.NO.2377 OF 2002

O R D E R

20th July, 2007